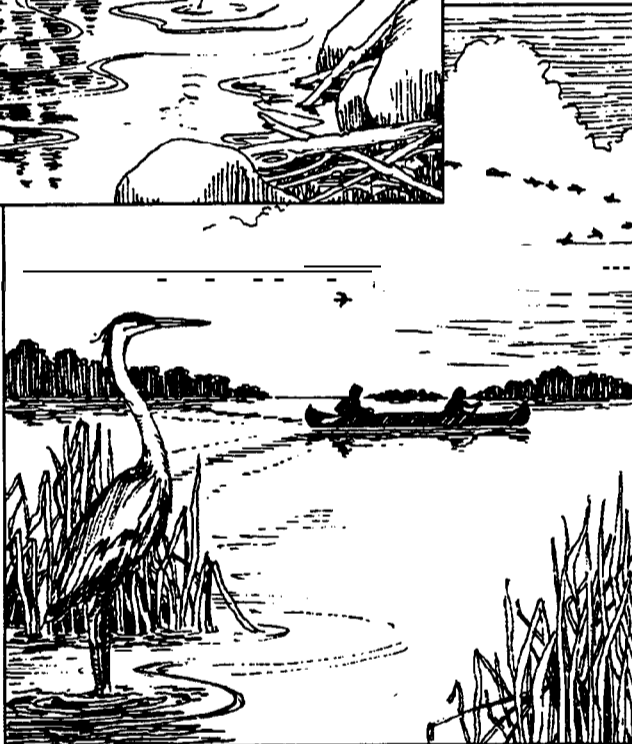
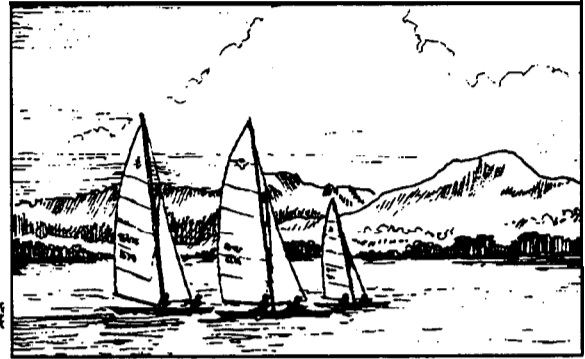


EPA REGION VIII GUIDANCE:

ANTIDEGRADATION IMPLEMENTATION



Requirements, Options, and EPA
Recommendations Pertaining to State/
Tribal Antidegradation Programs
August 1993



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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION VIII

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Date: August 1, 1993
Subject: EPA Region VII Guidance on
Antidegradation Implementation

Dear Colleague:

I am pleased to enclose for your information and use a document titled *EPA Region VIII Guidance: Antidegradation Implementation*. This guidance document is the result of Regional staff efforts over the last year, as well as our collective experience in working with state and federal antidegradation requirements over the last ten years. It is my hope that this guidance will provide appropriate support to state and tribal antidegradation programs within EPA Region VIII. Although all comments received on previous drafts have been carefully considered in preparing this final version, issuance of this guidance should not (and will not) end the dialogue between EPA, the states, and tribes on antidegradation issues. Further discussion on specific topics will be necessary as each of the states and Indian tribes in Region VIII progresses with its respective antidegradation implementation efforts.

The enclosed guidance document has been developed to establish a clear framework for consistency within EPA Region VIII on antidegradation issues. To accomplish this purpose, the guidance identifies specific minimum expectations and includes example, or "model," implementation approaches. However, the guidance also allows states and tribes the flexibility to pursue innovative approaches and to focus on particular problems. It is worth noting that the guidance emphasizes implementation of pollution prevention measures and other reasonable alternatives to allowing degradation as the focus of state/tribal antidegradation efforts to maintain the quality of high quality waters.

To provide adequate continuing support to state/tribal antidegradation programs, additional guidance will be forthcoming as the development of antidegradation programs within Region VIII progresses. This additional guidance may take the form of periodic revisions to this document, a compilation of "case studies" of general interest, and/or EPA comment letters in support of state/tribal triennial reviews. As always, I encourage you to notify us regarding your needs in this area.

Above all else, I hope the enclosed guidance will be useful to you in implementing antidegradation requirements in EPA Region VIII.

Sincerely,

A handwritten signature in black ink, reading "Max H. Dodson", followed by a horizontal line.

Max H. Dodson, Director
Water Management Division

Enclosure

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OVERVIEW

The purpose of this document is to provide assistance to the states and Indian tribes located in EPA Region VIII with the development of antidegradation policies and implementation procedures. Such policies and procedures are required by the federal water quality standards regulation at 40 CFR 131 .12. The document provides and discusses a recommended or “model” procedure for implementing antidegradation requirements, identifies the specific antidegradation issues that must be resolved by state and tribal antidegradation procedures, provides background information relevant to federal antidegradation requirements, and discusses how a number of key antidegradation issues have already been addressed by the states.

PURPOSE OF ANTIDegradation

The basic purpose of a state or tribal antidegradation program is to promote the maintenance and protection of existing water quality. Under this program, “waters of the United States” are typically provided antidegradation protection based on a system of three different levels, or tiers. The level of protection that is provided to a specific segment depends upon a number of factors (e.g., in many states a key determinant is whether the segment in question is attaining “fishable/swimmable” conditions). Antidegradation requirements are typically triggered when an activity is proposed that may have some effect on existing water quality.¹ Such activities are reviewed to determine, based on the level of antidegradation protection afforded to the affected waterbody segment, whether the proposed activity can be authorized. Antidegradation review findings must be documented and subjected to public review. Antidegradation recognizes that existing water quality has inherent value worthy of protection. Thus, unlike other aspects of water quality standards that are directed toward attainment of fully-protective levels of water quality (as defined by the applicable criteria), the purpose of antidegradation is to maintain and protect existing levels of water quality.

The basic purpose of an anti-degradation program is to maintain and protect existing water quality.

¹ A number of states limit application of antidegradation requirements to “regulated activities” (e.g., those requiring a permit or a water quality certification). However, states and tribes have authority to define the scope of their antidegradation programs more broadly than this.

STATE APPROACHES TO IMPLEMENTING ANTIDEGRADATION

All fifty-seven states and territories subject to water quality standards program requirements have established antidegradation policies as part of their water quality standards. Many of these antidegradation policies are identical to the federal policy contained in the water quality standards regulation at 40 CFR 131.12. The manner in which states and territories have implemented these policies differs widely, presenting a broad spectrum of approaches for addressing various issues. This variability has resulted from a number of factors including, but not limited to, the substantial level of state flexibility that is provided for by the federal water quality standards regulation and EPA's implementing guidance. Appendix 2 of this document contains a discussion of how various state antidegradation implementation procedures address a number of critical antidegradation issues.

FEDERAL ANTIDEGRADATION REQUIREMENTS

The federal requirements pertaining to antidegradation are included in § 131.12 of the federal water quality standards regulation. In essence, these requirements direct states to adopt antidegradation policies and identify the procedures that will be followed in implementing such policies. Certain minimum requirements exist for both policies and implementation procedures. The regulation requires implementation based on three levels, or tiers, of antidegradation protection:

- Tier 3: Maintain and protect high quality waters that constitute an outstanding national resource, such as waters of national and state parks and wildlife refuges and waters of exceptional recreational or ecological significance.
- Tier 2: Maintain and protect existing water quality, where such existing water quality exceeds levels necessary to support propagation of fish, shellfish, wildlife, and recreation in and on the water, unless the state finds **that** certain conditions are satisfied. A key finding which must be made is that allowing lower water quality is necessary because reasonable non-degrading or less-degrading alternatives are not available.
- Tier 1: Maintain and protect existing in-stream water uses and the level of water quality **necessary** to protect such existing uses, whether or not such uses are included in the water quality standards. This level of protection applies to all surface waters.

PRIORITY ISSUES

One of the primary purposes of this guidance document is to provide clear direction to EPA Region VIII states and tribes on the subject of antidegradation implementation. To this end, the guidance identifies a set of “bottom line” issues that states and tribes will need to address and clearly resolve within their antidegradation implementation procedures to be assured of EPA approval¹ The Region believes that identifying these bottom-line issues “up-front” will assist states and tribes with developing complete and workable, and hence approvable, antidegradation implementation procedures.

REGIONAL RECOMMENDATIONS ON ANTIDEGRADATION IMPLEMENTATION

This guidance document also includes specific recommended approaches for addressing a number of antidegradation implementation issues. This is accomplished primarily by including a model antidegradation implementation procedure in Chapter 2. The model procedure is intended to provide an example of how state and tribal antidegradation programs can address each of the key issues.. States and tribes may develop their own version of the EPA Region VIII model or a procedure entirely of their own design. A discussion of the Region’s rationale on many of the key antidegradation issues is provided in Chapter 4 of this guidance document. Among the more significant features of the Region’s recommended procedure include the following:

- > Model (tier 3) procedures for protection of Outstanding National Resource Waters (ONRWs) are recommended. New or expanded direct sources of pollution to ONRW segments are prohibited under the recommended approach. New or expanded upstream sources are allowed provided that there will be no change in ONRW water quality. The types of limited and temporary impacts to ONRW segments that may be allowed are defined. Model qualification criteria and procedures for designating ONRWs are also included.
- > A tier of antidegradation protection not currently required or recognized under the federal water quality standards regulation is recommended. A number of states have demonstrated the utility of providing this extra level of protection (referred to as tier 2.5). The recommended tier 2.5 procedures would provide

¹ The Region notes that, on a number of these key issues, there is a range of approaches that would be deemed acceptable.



an additional tool to states and tribes to ensure adequate protection of deserving high quality waters.

- > Model (tier 2) procedures are included for identifying and protecting “high quality” segments (i.e., segments where existing water quality is better than necessary to support fishable/swimmable uses). The emphasis of the tier 2 procedures is on ensuring that any reasonable less-degrading or non-degrading alternatives are identified and required of the project applicant. This focus is accomplished (in part) by applying tier 2 protection to a large percentage of all surface waters, and by establishing a low threshold by which proposed activities are judged “significant” and subject to further review, including the alternatives analysis requirements. The tier 2 procedures provide a powerful tool with which source reduction, pollution prevention, and maintenance of existing water quality can be promoted.

The emphasis of the tier 2 procedures is on ensuring that any reasonable less-degrading or non-degrading alternatives are identified and required of the project applicant.

- > A model (tier 1) procedure for identifying and protecting existing uses¹ is recommended. The model procedure presumes that implementation of the water quality criteria established to protect designated uses will also result in protection of existing uses. However, this presumption may be overcome based on site-specific information that is available at the time of the review or that becomes available as a result of public participation or intergovernmental coordination.
- > A number of questions and answers are included in the model procedure to help explain how the procedure applies in particular situations. EPA Region VIII recommends **that** state/tribal implementation procedures include such questions and answers as a means of clarifying the intended approach for addressing common problems.
- > A model antidegradation review worksheet is included to illustrate the type of standard form that can be utilized to document antidegradation review findings. EPA Region VIII recommends that states and tribes use such forms as a means of simplifying documentation requirements and facilitating public participation and intergovernmental coordination efforts.

¹ The federal water quality standards regulation defines the term “existing uses” as those uses actually attained in the water body on or after November 28, 1975, whether or not they are included in the water quality standards (see CFR 131.3).